

Larry Wasserman 4/11/2006

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4
5 UNITED STATES OF AMERICA,

6 et al.,

7 Plaintiffs,

8 vs.

9 STATE OF WASHINGTON, et al.,

10 Defendants.

)
)
)
) No. C70-9213

) Subproceeding No. 01-1
) (Culverts)
)

11
12 DEPOSITION UPON ORAL EXAMINATION
13 OF
14 LARRY WASSERMAN

15
16 9:30 a.m.

17 April 11, 2006

18 OFFICE OF THE ATTORNEY GENERAL
19 900 Fourth Avenue 1995
20 Seattle, Washington 98164

21
22 JACQUELINE L. BELLOWS
23 CCR 2297
24
25

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1 there was changes associated with it.

2 Q In the preparation that you did for this deposition, I
3 am confident you spoke with your attorney. Did you
4 speak with anybody else at the Skagit River System
5 Cooperative?

6 A Yes.

7 Q Who was that?

8 A I spoke with Steve Hinton.

9 Q Did you speak with anybody at the Northwest Indian
10 Fisheries Commission?

11 A No.

12 Q Did you speak with anybody employed by the Plaintiff
13 United States?

14 A No.

15 Q Did you speak with anyone else besides your attorney?

16 A I spoke with John Sledd. I don't know if he is our
17 attorney or he's an attorney for the tribes. And I
18 spoke with Alix Foster, is our attorney.

19 MS. FOSTER: For the record, John represents
20 Sauk-Suiattle.

21 THE WITNESS: Thank you.

22 MS. WOODS: Thank you.

23 Q (By Ms. Woods) Now, you described the subject matter of
24 what you understand your testimony to be as impacts of
25 specific culverts, both those that currently block fish

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1 passage and those that have been repaired. Are you
2 expecting to talk only about the Skagit system in
3 identifying those culverts?

4 A No.

5 Q Are you expecting to talk about the Sammish River as
6 well?

7 A I don't know.

8 Q Do you expect to talk about the Skagit River system?

9 A Yes.

10 Q Are there any other river systems that you expect to
11 talk about?

12 A Yes.

13 Q What are those?

14 A Nooksack, Stilliguamish, Snohomish.

15 Q How did you become familiar with culverts in the
16 Nooksack system?

17 A I haven't yet done the work to become familiar with the
18 culverts in the Nooksack.

19 Q How did you become familiar with the Stilliguamish
20 system and the culverts in it?

21 A I haven't yet done the work for the Stilliguamish.

22 Q Have you done the work yet for Snohomish?

23 A No.

24 Q Have you done the work for Skagit?

25 A No. I've done some of the work for Skagit. I've done

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1 some of the work for Skagit.

2 Q Have you done the work for Sammish?

3 A I haven't done any work for Sammish. And the Sammish --
4 let me just clear this up for the record. It's the
5 Sammish River, not the Sammish tribe. Sammish River.

6 MS. WOODS: We would reserve the right to
7 continue the deposition to a later date so that we
8 can ask questions about the river systems that
9 Mr. Wasserman's not done the work for.

10 Q (By Ms. Woods) Because you have done some of the work
11 for Skagit, we'll talk about that today. What is the
12 status of anadromous stocks overall on the Skagit River
13 system at this time?

14 A There are a variety of stocks, and the status is
15 different for each of them. So I'm not -- so would you
16 like me to answer those stock by stock?

17 Q We'll go through them stock by stock. I have questions
18 that are stock by stock. Are you familiar with the
19 salmonid stock inventory?

20 A I'm not sure which salmonid stock inventory you're
21 talking about.

22 Q Are you familiar with the salmon and steelhead stock
23 inventory?

24 A I am familiar that it exists. I've read it, have not
25 read it recently. So I have some familiarity with some

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1 A I don't know that anybody -- I don't know if anybody
2 has.

3 Q Have you or anyone prepared an analysis of lost harvest
4 of pink salmon from the Skagit system due to blocking
5 culverts?

6 A Not that I'm aware of at this time.

7 Q Do culverts affect pink salmon habitat?

8 A It can.

9 Q In what way?

10 A If they're blocking their upstream access and they're --
11 it's a stream big enough that the pinks will use, it can
12 impact pink production.

13 Q Do pinks typically use larger streams?

14 A Pinks typically use larger streams.

15 Q Would those be streams that would be more likely crossed
16 with a bridge rather than a culvert?

17 A More likely.

18 Q Do culverts affect chum salmon habitat?

19 A They can.

20 Q In what way?

21 A Either by blocking their passage or changing the
22 upstream or downstream characteristics of the stream.

23 Q Do chum salmon have -- I'm going to reveal that I don't
24 know everything about chum salmon. Do they rear in the
25 stream in the way that coho do?

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1 A No.

2 Q Do chum salmon hatch and then go right out to sea?

3 A They spend a short period of time in the river, but they
4 don't immediately leave.

5 Q So where would a blocking culvert interfere with a chum
6 salmon's life cycle?

7 A Either by preventing them from getting to their spawning
8 areas by failing and destroying salmon habitat
9 downstream that they might choose to spawn in or have
10 spawned in, therefore bearing eggs; ongoing maintenance
11 of a culvert's activities that might result in the
12 dredging of chum salmon; changes in their groundwater
13 hydrology associated with a culvert. That is a partial
14 list of activities associated with culverts that may
15 adversely affect chum salmon production.

16 Q Would some of those impacts be associated with the road,
17 not just the culvert?

18 A They could be associated with the road.

19 Q Have you or anyone prepared any analysis of how much
20 chum salmon habitat in the Skagit River system has been
21 lost because of culverts?

22 A Not that I'm aware of.

23 Q Have you or anyone prepared any analysis of lost harvest
24 of chum salmon from the Skagit system due to culverts?

25 A Not that I'm aware of.

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1 Q Do culverts affect sockeye salmon habitat?

2 A Not that I'm aware of in the Skagit.

3 Q I think we already talked a little bit about Chinook.

4 Now, these exhibits that we spent so much time on
5 and maybe aren't done with if we find Appendix A,
6 Exhibit 11 and Exhibit 12, how much influence did those
7 documents have on the decision to file this lawsuit?

8 A I can't answer that question.

9 Q Were you involved in the decision to file this
10 litigation?

11 A No, I wasn't involved in the decision to file the
12 lawsuit.

13 Q The studies you've done on the Skagit for coho,
14 exhibits -- well, Exhibit 10 in particular, to what
15 extent is --

16 A Exhibit 10? Excuse me. Exhibit 10?

17 Q Well, Exhibit 10 and 11.

18 To what extent are your studies in the Skagit
19 representative of fish habitat production conditions in
20 other watersheds in the Puget Sound area?

21 A The general characteristics that were described in both
22 those documents can be found through -- in my experience
23 in being throughout the Puget Sound, can be found in
24 other areas throughout Puget Sound. The specific
25 numbers certainly would be different from place to

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1 species. Some factors will improve characteristics for
2 some species. Some will have less importance. It
3 depends what the fact -- we just haven't done the
4 analysis.

5 Q Do you have any opinion on -- if the Puget Sound
6 steelhead are listed as threatened under the Endangered
7 Species Act, do you have an opinion on whether the
8 Skagit Chinook Recovery Plan would work as a recovery
9 plan for steelhead in the Skagit basin?

10 A I haven't done that analysis. Different species. That
11 analysis, to my knowledge, hasn't been done, so I
12 wouldn't be able to give you an opinion.

13 Q Are you familiar with the term "four H's" in the context
14 of salmon recovery?

15 A I am.

16 Q What are the four H's?

17 A Habitat, hydropower, harvest, hatcheries.

18 Q Do you believe that salmon recovery requires a big
19 picture approach that includes all four H's?

20 A It certain requires integration of all four H's.

21 Q We have talked specifically about a couple culverts, the
22 Red Cabin Creek culvert and the Bacon Creek culvert.
23 Are there other specific state-owned culverts in the
24 Skagit basin whose repair or replacement you believe
25 could positively affect anadromous fish populations in

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1 the Skagit River basin?

2 A Yes.

3 Q What are those?

4 A There have been a number of culverts, state-owned
5 culverts, identified on Highway 9 where fish passage
6 either doesn't exist or is inadequate, that providing
7 adequate passage or culvert size will positively affect,
8 in my opinion, fish numbers.

9 Q In Exhibit 4 there is a table 1. Are those Highway 9
10 culverts that you mentioned on the list in table 1?

11 A There are four -- there are a number of culverts listed
12 on Highway 9. But I don't know if those are the four --
13 those are the culverts, specifically. I don't know them
14 to use as identifiers at this time.

15 Q Do you know whether they're on any of the other lists
16 that we've looked at today?

17 A I don't know. I don't know the identifier for them in
18 these lists to be able to be definitive about that
19 answer at this time.

20 Q Of those culverts that you believe are blocking fish
21 passage on Highway 9, are there other fish-blocking
22 structures downstream of those culverts?

23 A I can't answer that at this time.

24 Q You said that you believe that fish, there would be more
25 fish if those culverts on Highway 9 were fixed. What

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1 A Not that I'm aware of at this time.

2 Q Are you aware of any culverts owned by local governments
3 whose repair or replacement you believe could positively
4 affect anadromous fish populations in the Skagit River
5 basin?

6 A Again, I'd refer to document Exhibit 13 as -- and I
7 don't know the current status, but there's a list of
8 county and some private culverts there. I just don't
9 know the status of all.

10 Q Of the four types of landowners we just talked about:
11 State, federal, county, private -- which -- culverts by
12 which of those entities are the bigger problem, in your
13 opinion?

14 A I haven't done that analysis.

15 Q Are you aware of any state-owned culverts, any
16 particular state-owned culverts in the Sammish River
17 basin whose repair or replacement you believe could
18 positively affect anadromous fish populations?

19 A There was a culvert at Ennis Creek that was -- oh, I'm
20 sorry. Was your question specific to state-owned
21 culverts or culverts in the Sammish?

22 Q State owned.

23 A I don't recall the ownerships of the culverts in the
24 Sammish.

25 Q You were about to identify one at Ennis Creek. You're

1 uncertain of the ownership of that culvert?

2 A Yes, I'm uncertain.

3 Q But it's one whose repair or replacement you believe
4 could positively affect the anadromous fish populations
5 in the Sammish River basin?

6 A Yes, but I don't know the status of it. It was being
7 considered for replacement or repair, and I just don't
8 know the status.

9 Q To your knowledge, in the past 10 years has the State of
10 Washington provided funds to fix any culverts owned by
11 the United States Forest Service in the Skagit basin?

12 A I don't know if the State of Washington has provided
13 funds to fix forest service roads.

14 Q To your knowledge, in the past 10 years has the State of
15 Washington provided funds to fix any privately-owned
16 culverts in the Skagit basin?

17 A Yes.

18 Q To your knowledge, in the past 10 years has the State of
19 Washington provided funds to fix any culverts owned by
20 local governments in the Skagit basin?

21 A I believe it has.

22 Q With respect to the privately-owned culverts for which
23 the, for whose repair the money [sic] has provided
24 money, did any of that money come through the Skagit
25 River System Cooperative in the form of a grant?

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C E R T I F I C A T E

STATE OF WASHINGTON)

) SS

COUNTY OF KING)

I, Jacqueline L. Bellows, a Notary Public in and for the State of Washington, do hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth;

That the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; and that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, and thereafter transcribed under my direction;

That the foregoing transcript is a true record of the testimony given by the witness and of all objections made at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any party to this matter nor to any of counsel, nor do I have any interest in the matter.

Witness my hand and seal this 25th day of April, 2006.

Jacqueline L. Bellows, Notary
Public in and for the State
of Washington, residing at
Arlington. Commission
expires October 19, 2006.